

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARBARA MALAK,

Civil Action No. 16-13838

Plaintiff,

HON. R. STEVEN WHALEN

v.

U.S. Magistrate Judge

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

OPINION AND ORDER

Plaintiff Barbara Malak (“Plaintiff”) brings this action under 42 U.S.C. §405(g), challenging a final decision of Defendant Commissioner denying her applications for Supplemental Security Income (“SSI”) and Disability Insurance Benefits (“DIB”) under the Social Security Act. Both parties have filed summary judgment motions. For the reasons and under the terms stated on the record on March 13, 2018, Plaintiff’s Motion for Summary Judgment [Dock. #10] is GRANTED to the extent that the case is remanded for further administrative proceedings, pursuant to the fourth sentence of 42 U.S.C. § 495(g). Defendant’s Motion for Summary Judgment [Dock. #18] is DENIED.

The ALJ’s formulation of the Plaintiff’s RFC, and the hypothetical question to the Vocational Expert, contained a limitation on “repetitive twisting with the left upper

extremity” and the “non-dominant upper extremity.” In addition, the RFC provided for work at all exertional levels. However, the record is clear that Plaintiff is *right handed*, and that she suffers from *right* carpal tunnel syndrome. It is unclear how upper extremity limitations of the *right* upper extremity would change the job findings, particularly because Plaintiff, 62 at the time of the decision was “approaching retirement age.” Therefore, a finding that she was limited to light or sedentary unskilled, for example, would result in a finding of disability. *See* Rule 203.07 of the Medical–Vocational Guidelines; 20 C.F. R. pt. 404, subpt. P, app. 2, § 203.07.

On remand, the AJL reconsider Plaintiff’s claim for benefits based on a correct RFC and hypothetical question, that accurately portrays her limitations.

IT IS SO ORDERED.

s/ R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: March 13, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on March 13, 2018, electronically and/or by U.S. mail.

s/Carolyn M. Ciesla
Case Manager to the
Honorable R. Steven Whalen